

AMENDED IN SENATE APRIL 1, 2003

SENATE BILL

No. 761

Introduced by Senator McPherson

February 21, 2003

An act to amend ~~Section 1802.1~~ *Sections 1802.1 and 1808* of the Insurance Code, and to amend Sections 1278, 1287, and 1308 of the Penal Code, relating to bail services.

LEGISLATIVE COUNSEL'S DIGEST

SB 761, as amended, McPherson. Insurance: bail services.

Existing law provides for the licensing of bail agents by the Insurance Commissioner and requires an applicant for a license to file with the commissioner a notice of appointment executed by a surety insurer or its authorized representative authorizing the applicant to execute undertakings of bail and to solicit and negotiate those undertakings on its behalf.

This bill would require an applicant, in addition, to file with the commissioner an affidavit signed under penalty of perjury regarding the applicant's ~~outstanding financial obligations, unsatisfied judgments, and prior agreements with insurers~~ *debts owed to insurers, as specified*. It would require the applicant and the appointing insurer to deliver a copy of the affidavit to any insurance company with whom that bail agent has had an appointment over the preceding 2 years. The bill would provide that, if an insurer challenges the veracity of the affidavit, the appointing insurer shall ~~immediately~~ cancel the appointment, ~~and that a bail agent may file a petition with the Department of Insurance for a hearing on the issue, but that this obligation to cancel the appointment shall not apply if certain events occur~~. By adding to the circumstances

that may lead to the crime of perjury, the bill would impose a state-mandated local program.

Existing law provides that bail agents and other bail licensees are eligible for license renewal if they file certain documents and pay the applicable fees in a timely manner. Existing law allows the commissioner to suspend, revoke, or refuse to issue bail licenses for specified reasons.

This bill would prohibit the commissioner from completing a license renewal request if, at least 60 days before the renewal, an insurer that had previously appointed the licensee files an affidavit with the commissioner stating that the licensee has failed to reimburse the insurer for specified funds advanced by the insurer. The bill would require the commissioner to renew the license on a restricted basis if the licensee challenges the affidavit and to hold a hearing on the issue. It would authorize the commissioner to take certain actions with respect to the licensee or the insurer depending on the outcome of the hearing, and would require him or her to renew the license immediately upon the complete satisfaction of the financial obligations alleged in the affidavit.

Existing law requires that certain information be provided in a written undertaking of bail.

This bill would require, in addition, that an undertaking of bail include the bail agent license number and other specified information.

Existing law prohibits a court or magistrate from accepting any person or corporation as surety on bail if any summary judgment against that person or corporation entered pursuant to other provisions of law remains unpaid after the expiration of 30 days after service of the notice of the entry of the summary judgment, except as specified.

This bill would, in addition, prohibit a court, magistrate, or jail from accepting an undertaking of bail from a bail agent or bail agency if any summary judgment entered against an undertaking issued by the bail agent or agency remains unpaid for the period applicable to sureties. It would provide for removal of the disqualification upon certain events.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1802.1 of the Insurance Code is
2 amended to read:
3 1802.1. Every applicant for a license to act as bail agent must
4 file with the commissioner a notice of appointment executed by a
5 surety insurer or its authorized representative authorizing the
6 applicant to execute undertakings of bail and to solicit and
7 negotiate those undertakings on its behalf. Additional notices of
8 appointment may be filed by other surety insurers, upon the
9 payment for each additional notice of the fees specified in
10 subdivision (a) of Section 1811, before the license is issued and
11 thereafter, as long as the license remains in force. Each
12 appointment shall, by its terms, continue in force until:
13 (a) Termination of the bail agent's license;
14 (b) The end of the license year, if the fee provided in
15 subdivision (d) of Section 1811 for filing an annual notice of
16 intention to keep the license in force or a renewal application is not
17 paid; or
18 (c) The filing of a notice of termination by the insurer, its
19 representative, or by the bail agent.
20 (d) Prior to any appointment of a bail agent, the appointing
21 insurer and bail agent must file with the commissioner:
22 (1) An affidavit made under penalty of perjury signed by the
23 bail agent stating that no ~~premiums or other financial obligations~~
24 ~~are currently owed to any insurer; that no~~ judgments are
25 outstanding and remain unsatisfied as the result of undertakings of
26 bail executed by the agent on behalf of any insurer; ~~and that the bail~~
27 ~~agent is obligated to fulfill any and all terms of prior agreements~~
28 ~~with insurers whom the bail agent had contracted to represent and~~
29 ~~that no moneys are due to any insurer as a result of that insurer~~
30 ~~satisfying a summary judgment that was the result of an~~
31 ~~undertaking or undertakings of bail executed by or on behalf of the~~
32 bail agent. However, these representations shall not apply to an
33 active bail forfeiture that has yet to be placed into summary
34 judgment pursuant to Section 1306 of the Penal Code.

1 (2) Within 30 days of filing the above-referenced affidavit with
2 the commissioner, the bail agent and the appointing insurer shall
3 deliver a copy of the affidavit required under paragraph (1) to any
4 insurer with which that bail agent has had an appointment over the
5 preceding two-year period. If, within 30 days after receipt of the
6 affidavit, an insurer challenges the truth of the affidavit by filing
7 with the commissioner and the appointing insurer a written
8 notification, including supporting documentation, that the
9 affidavit is not truthful, the appointing insurer shall immediately
10 cancel the bail agent appointment. ~~The bail agent may only be~~
11 ~~reappointed upon written confirmation that the affidavit is no~~
12 ~~longer inaccurate. The appointed insurer or the bail agent may,~~
13 ~~within 30 days of the receipt of the challenge to the affidavit, file~~
14 ~~a petition with the department seeking a hearing on this matter. The~~
15 ~~filing of this petition shall stay the obligation to cancel the~~
16 ~~appointment until the resolution of the hearing. However, this~~
17 ~~obligation to cancel the appointment shall not be effective if,~~
18 ~~within 30 days of the filing of the challenge by the previous insurer,~~
19 ~~a written stipulation is executed and delivered by the agent and~~
20 ~~challenging insurer that the financial obligations described in this~~
21 ~~section have been satisfied, or the appointing insurer or bail agent~~
22 ~~files a petition with the commissioner disputing the veracity or~~
23 ~~accuracy of the prior insurer's challenge. If the agent or~~
24 ~~appointing insurer is unsuccessful at the hearing on the merits of~~
25 ~~the dispute, the obligation to cancel the appointment shall be~~
26 ~~reinstated.~~

27 SEC. 2. *Section 1808 of the Insurance Code is amended to*
28 *read:*

29 1808. (a) Annual notices of intention to keep licenses in force
30 or applications for renewal of licenses, as the case may be, may be
31 filed on or before May 1st of each year upon payment of the fees
32 for filing specified in Section 1811.

33 (b) Such notices or applications may be filed between May 1st
34 and July 1st upon payment of a fee twice that specified in Section
35 1811 for such filing.

36 (c) Upon failure to file such notice or application as provided
37 in either (a) or (b) hereof, the license shall expire on July 1st, but
38 the holder may file an application for a new license. Until June
39 30th next succeeding the fee shall be twice that specified in Section

1811 for such filing. The commissioner shall mail notice of such expiration of the license not later than June 20th, to:

- (1) The licensee.
- (2) The employing bail agent or permittee, if any.
- (3) The appointing insurers, if any.

(d) No notice or application shall be deemed filed within the meaning of this section unless the document itself has been actually delivered to, and the proper fee for its filing has been paid at, the office of the commissioner during office hours, or unless both such document and fee have been filed and remitted pursuant to Sections 11002 and 11003 of the Government Code.

(e) If at least 60 days prior to the renewal of any bail license, an affidavit is filed with the commissioner by any insurer by whom the licensee previously had been appointed stating that the licensee has failed to reimburse the insurer for funds advanced to satisfy valid and enforceable summary judgments on undertakings of bail by the licensee, the commissioner shall not complete the licensee's renewal request. If the licensee formally challenges the affidavit, the license shall be issued on a restricted basis subject to the outcome of a hearing on the substance of the affidavit. The commissioner may deny the renewal of the license if he or she determines that the facts alleged in the affidavit are true. The commissioner shall immediately renew the license upon the complete satisfaction of the financial obligations alleged under the affidavit. If, at the hearing, the commissioner rules in favor of the licensee and determines that the affidavit was filed in bad faith and without probable cause, the commissioner may impose a fine or other penalty upon the insurer.

SEC. 3. Section 1278 of the Penal Code is amended to read:

1278. (a) Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An order having been made on the ____ day of ____, 20__, by ____, a judge of the ____ Court of ____ County, that ____ be held to answer upon a charge of (stating briefly the nature of the offense), upon which he or she has been admitted to bail in the sum of ____ dollars (\$____); we, ____ and ____, of ____ (stating their place of residence and occupation), hereby undertake that the

1 above-named _____ will appear and answer any charge in any
2 accusatory pleading based upon the acts supporting the charge
3 above mentioned, in whatever court it may be prosecuted, and will
4 at all times hold himself or herself amenable to the orders and
5 process of the court, and if convicted, will appear for
6 pronouncement of judgment or grant of probation, or if he or she
7 fails to perform either of these conditions, that we will pay to the
8 people of the State of California the sum of _____ dollars (\$____)
9 (inserting the sum in which the defendant is admitted to bail). If
10 the forfeiture of this bond be ordered by the court, judgment may
11 be summarily made and entered forthwith against the said (naming
12 the sureties), and the defendant if he or she be a party to the bond,
13 for the amount of their respective undertakings herein, as provided
14 by Sections 1305 and 1306.

15

16 (b) Every undertaking of bail shall contain the bail agent
17 license number of the owner of the bail agency issuing the
18 undertaking along with the name, address, and phone number of
19 the agency, regardless of whether the owner is an individual,
20 partnership, or corporation. The bail agency name on the
21 undertaking shall be a business name approved by the Insurance
22 Commissioner for use by the bail agency owner, and be so
23 reflected in the public records of the commissioner. The license
24 number of the bail agent appearing on the undertaking shall be in
25 the same type size as the name, address, and phone number of the
26 agency.

27 ~~SEC. 3.~~

28 *SEC. 4.* Section 1287 of the Penal Code is amended to read:

29 1287. (a) The bail shall be put in by a written undertaking,
30 executed by two sufficient sureties (with or without the defendant,
31 in the discretion of the court or magistrate), and acknowledged
32 before the court or magistrate, in substantially the following form:

33

34

35 An indictment having been found on the _____ day of _____,
36 20____, in the Superior Court of the County of _____, charging _____
37 with the crime of _____ (designating it generally) and he or she
38 having been admitted to bail in the sum of _____ dollars (\$____),
39 we, _____ and _____, of _____ (stating their place of residence and
40 occupation), hereby undertake that the above-named _____ will



1 appear and answer any charge in any accusatory pleading based
2 upon the acts supporting the indictment above mentioned, in
3 whatever court it may be prosecuted, and will at all times render
4 himself or herself amenable to the orders and process of the court,
5 and, if convicted, will appear for pronouncement of judgment or
6 grant of probation; or, if he or she fails to perform either of these
7 conditions, that we will pay to the people of the State of California
8 the sum of ____ dollars (\$____) (inserting the sum in which the
9 defendant is admitted to bail). If the forfeiture of this bond be
10 ordered by the court, judgment may be summarily made and
11 entered forthwith against the said (naming the sureties, and the
12 defendant if he or she be a party to the bond), for the amount of
13 their respective undertakings herein, as provided by Sections 1305
14 and 1306.

15
16 (b) Every undertaking of bail shall contain the bail agent
17 license number of the owner of the bail agency issuing the
18 undertaking along with the name, address, and phone number of
19 the agency, regardless of whether the owner is an individual,
20 partnership, or corporation. The bail agency name on the
21 undertaking shall be a business name approved by the Insurance
22 Commissioner for use by the bail agency owner, and be so
23 reflected in the public records of the commissioner. The license
24 number of the bail agent appearing on the undertaking shall be in
25 the same type size as the name, address, and phone number of the
26 agency.

27 ~~SEC. 4.~~

28 *SEC. 5.* Section 1308 of the Penal Code is amended to read:

29 1308. (a) No court or magistrate shall accept any person or
30 corporation as surety on bail if any summary judgment against that
31 person or corporation entered pursuant to Section 1306 remains
32 unpaid after the expiration of 30 days after service of the notice of
33 the entry of the summary judgment, provided that, if during the 30
34 days an action or proceeding available at law is initiated to
35 determine the validity of the order of forfeiture or summary
36 judgment rendered on it, this section shall be rendered inoperative
37 until that action or proceeding has finally been determined,
38 provided that, if an appeal is taken, an appeal bond is posted in
39 compliance with Section 917.1 of the Code of Civil Procedure.

1 (b) The clerk of the court in which the judgment is rendered
2 shall serve notice of the entry of judgment upon the judgment
3 debtor within five days after the date of the entry of the summary
4 judgment.

5 (c) No court, magistrate, or jail shall accept any undertaking of
6 bail from a bail agent or bail agency identified on the undertaking
7 pursuant to Section 1278.1 if any summary judgment entered
8 against an undertaking issued by the bail agent or bail agency
9 pursuant to Section 1306 remains unpaid as described in
10 subdivision (a). This disqualification shall also apply to any bail
11 agency in which the disqualified bail agent holds an ownership
12 interest, including any partnership or corporation licensed by the
13 Insurance Commissioner to issue bail undertakings. The
14 disqualification shall no longer be in force if the surety is reinstated
15 or if the summary judgment entered against the surety pursuant to
16 Section 1306 is paid by the bail agent or otherwise satisfied.

17 ~~SEC. 5.~~

18 *SEC. 6.* No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.

